

## **CHAPTER 23-06.2 UNIFORM ANATOMICAL GIFT ACT**

**23-06.2-01. Definitions.** As used in this chapter, unless the context or subject matter otherwise requires:

1. "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.
2. "Decedent" means a deceased individual and includes a stillborn infant or fetus.
3. "Document of gift" means a card; a statement attached to or imprinted upon a motor vehicle operator's license or permit or nondriver photo identification card issued by the department of transportation; a will; or any other writing used to make an anatomical gift.
4. "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.
5. "Enucleator" means an individual who has successfully completed a course in eye enucleation conducted by the department of ophthalmology of an accredited college of medicine that has been approved by the state board of medical examiners.
6. "Hospital" means a facility licensed, accredited, or approved as a hospital under the laws of any state and includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state law.
7. "Part" means an organ, tissue, eye, bone, artery, blood, fluid, and any other portion of a human body.
8. "Physician" or "surgeon" means an individual licensed or authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.
9. "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts thereof.
10. "State" means any state, district, commonwealth, territory, insular possession, or other area subject to the legislative authority of the United States of America.
11. "Technician" means an individual who is licensed or certified by the state board of medical examiners to remove or process a part.

**23-06.2-02. Making, amending, revoking, and refusing to make anatomical gifts by individual.**

1. An individual who has attained eighteen years of age may make an anatomical gift for any of the purposes specified in subsection 1 of section 23-06.2-06 or may refuse to make an anatomical gift. An individual may limit an anatomical gift to one or more of the purposes specified in subsection 1 of section 23-06.2-06.
2. An anatomical gift may be made by a document of gift.
  - a. A document of gift must be signed by the donor. If the donor cannot sign, the document of gift must state that it has been signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and in the presence of each other.

- b. A document of gift may be a statement attached to or imprinted upon a donor's motor vehicle operator's license or permit or nondriver photo identification card issued by the department of transportation subject to subdivision a. Revocation, suspension, expiration, or cancellation of the license, permit, or identification card does not invalidate the anatomical gift.
  - c. Notwithstanding subsection 2 of section 23-06.2-08, a document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator for the purpose.
- 3. An anatomical gift by will becomes effective upon death of the testator without waiting for probate. If the will is not probated, or if, after death, it is declared invalid for testamentary purposes, the gift is nevertheless valid.
- 4. The donor may amend or revoke an anatomical gift, not made by will, only by:
  - a. A signed statement;
  - b. An oral statement made in the presence of two individuals;
  - c. Any form of communication during a terminal illness or injury addressed to a physician or surgeon; or
  - d. The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.
- 5. An anatomical gift made by a will may be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection 4.
- 6. An anatomical gift that is not revoked by the donor is irrevocable and does not require the consent or concurrence of any other person after the death of the donor but is subject to subsection 2 of section 23-06.2-11.
- 7. A potential donor may refuse to make an anatomical gift by a writing executed in the same manner as an anatomical gift is made or any other instrument used to identify the individual as refusing to make an anatomical gift. It may be an oral statement or other form of communication during a terminal illness or injury.
- 8. An anatomical gift of a part by a donor pursuant to subsection 1 is not a refusal to give other parts in the absence of contrary indications by the donor and is not a limitation on a gift or release of other parts pursuant to sections 23-06.2-03 and 23-06.2-04.
- 9. A revocation or amendment of an anatomical gift by a donor is not a refusal to make another anatomical gift in the absence of contrary indications by the donor. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor must make a refusal pursuant to subsection 7.

**23-06.2-03. Making, revoking, and objecting to anatomical gifts by others.**

- 1. Unless an individual at the time of death has refused to make any anatomical gift, then any member of the following classes of persons, in the order of priority stated, may make an anatomical gift of all or any part of the decedent's body for any purpose specified in section 23-06.2-06:
  - a. The spouse of the decedent.

- b. An adult son or daughter of the decedent.
  - c. Either parent of the decedent.
  - d. An adult brother or sister of the decedent.
  - e. A grandparent of the decedent.
  - f. A guardian of the person of the decedent at the time of death.
2. A gift may not be made by a person specified in subsection 1 if:
- a. A person in a prior class is available at the time of death to make an anatomical gift;
  - b. The person has knowledge of contrary indications by the decedent; or
  - c. The person has knowledge of an objection by a member of the person's class or a prior class.
3. An anatomical gift by a person under subsection 1 must be made by a document of gift signed by the person, or by the person's telegraphic, recorded telephonic, or other recorded message, or other type of communication from the person that is contemporaneously reduced to writing and signed by the recipient.
4. An anatomical gift by a person under subsection 1 may be revoked by any member of the same or a prior class if, before commencement of procedures for the removal of any part from the body of the decedent, the physician, surgeon, technician, or enucleator taking the part knows of the revocation.
5. A failure to make an anatomical gift under subsection 1 is not an objection to the making of an anatomical gift.

**23-06.2-04. Authorization by coroner or local public health official.**

1. The coroner may permit the removal and release of any part from a body within the coroner's custody, for transplant or therapeutic purposes, if the following requirements are met:
- a. A request has been received from a person specified in subsection 1 of section 23-06.2-06;
  - b. A reasonable effort has been made, taking into account the useful life of the part, to locate and examine the decedent's medical records, and to inform persons specified in subsection 1 of section 23-06.2-03 of the option to make or object to the making of an anatomical gift;
  - c. That official does not know of a contrary indication by the decedent or objection by a person having priority to act as specified in subsection 1 of section 23-06.2-03;
  - d. The removal will be by a physician, surgeon, or technician; but in the case of eyes, removal may be by an enucleator;
  - e. The removal will not interfere with any autopsy or investigation; and
  - f. The removal will be in accordance with accepted medical standards and cosmetic restoration will be done if appropriate.

2. If the body is not within the custody of the coroner, the local public health officer may permit the removal and release of any part from a body within the local public health officer's custody for transplant or therapeutic purposes if the enumerated requirements of subsection 1 are met.
3. An official permitting the removal and release of any part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, and the person to whom it is released.

**23-06.2-05. Request for consent to an anatomical gift - Protocol - Exceptions.**

1. When death occurs, or is deemed to be imminent, in a hospital to a patient who has not made an anatomical gift, the hospital administrator or a designated representative, other than a person connected with the determination of death, shall request the person described in subsection 1 of section 23-06.2-03, in the order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indication by the decedent or one in a prior class, to consent to the gift of organs of the decedent's body as an anatomical gift. The hospital shall develop a protocol that includes the training of employees or other persons designated to make the request, the procedure to be followed in making the request, and a form of record identifying the person making the request and the response and relationship to the decedent. The protocol must encourage reasonable discretion and sensitivity to the family circumstances in all discussions regarding anatomical gifts.
2. If, based upon medical criteria, a request would not yield an anatomical gift that would be suitable for use, there is authorized an exception to the request required by this section.
3. If, based upon the attending physician's special and peculiar knowledge of the decedent or the circumstances surrounding the death of the patient, the attending physician determines that a request will not be made for an anatomical gift, that determination must be noted in the patient's medical record. The determination is an exception to the request required by this section.
4. A reasonable search for a document of gift or other information identifying the bearer as an anatomical gift donor or as an individual who has refused to make an anatomical gift must be made by:
  - a. A law enforcement officer, fireman, paramedic, or other emergency rescuer finding an individual whom the searcher believes to be dead or near death; and
  - b. A hospital representative upon the admission of an individual at or near the time of death, if there is no other source of that information immediately available.
5. If a document of gift or evidence of refusal to make a gift is located by the search required by subdivision a of subsection 4, a hospital must be notified of the contents and the document must be sent to the hospital with the individual to whom it applies.
6. If, at or near the time of death, a hospital knows that an anatomical gift has been made pursuant to subsection 1 of section 23-06.2-03 or has been authorized pursuant to section 23-06.2-04, or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is specified; if not, the hospital shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift.
7. Any person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

**23-06.2-06. Persons who may become donees - Purposes for which anatomical gifts may be made.**

1. The following persons may become donees of anatomical gifts for the purposes stated:
  - a. Any hospital, physician, surgeon, or procurement organization, for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science.
  - b. Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy.
  - c. Any specified individual for transplantation or therapy needed by that individual.
2. An anatomical gift may be made to a specified donee or without specifying a donee. If a donee is not specified or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital.
3. If the donee has knowledge of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class under subsection 1 of section 23-06.2-03, the donee may not accept the gift.

**23-06.2-07. Delivery of document of gift.**

1. Delivery of a document of gift during the donor's lifetime is not necessary to the validity of an anatomical gift.
2. If an anatomical gift is made to a specified donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures immediately after death. The document of gift, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested person, upon or after the donor's death, the person in possession shall provide the document of gift or a copy for examination.

**23-06.2-08. Rights and duties at death.**

1. Rights of a donee created by an anatomical gift are paramount to rights of others except as provided by subsection 2 of section 23-06.2-11. A donee may accept or reject an anatomical gift. If a donee accepts a gift of the entire body, the donee, subject to the terms of the gift, may authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.
2. The time of death must be determined by a physician or surgeon who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the attending physician or surgeon nor the physician or surgeon who determines the time of death may participate in the procedures for removing or transplanting a part, except as provided in subdivision c of subsection 2 of section 23-06.2-02.
3. If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician or surgeon.

**23-06.2-09. Coordination of procurement and utilization.** Each hospital, after consultation with other hospitals and procurement organizations in the region, shall establish agreements or affiliations for coordination of procurement and utilization of anatomical gifts.

**23-06.2-10. Sale or purchase prohibited - Penalty.**

1. A person may not knowingly, for valuable consideration, purchase or sell any part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.
2. Valuable consideration does not include reasonable payments for removal, processing, disposal, preservation, quality control, storage, transportation, and implantation of a part.
3. Any person who violates this section is guilty of a class B misdemeanor.

**23-06.2-11. Examination - Autopsy - Liability.**

1. An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.
2. This chapter is subject to the laws of this state prescribing powers and duties with respect to autopsies.
3. Except as provided in section 23-06.2-10, a hospital, physician, surgeon, coroner, local public health officer, enucleator, technician, or any other person who acts in accordance with this chapter or with the applicable anatomical gift law of another state or a foreign country or attempts in good faith to do so is not liable for that activity in any civil action or criminal proceeding.
4. An individual who makes an anatomical gift and the individual's estate are not liable for any injury or damage that may result from the use of the anatomical gift.

**23-06.2-11.1. Anatomical parts testing - Exception.** No anatomical parts of human bodies, including whole blood, plasma, blood products, blood derivatives, semen, body tissue, organs, and parts of organs or products derived from parts of organs may be used for injection, transfusion, or transplantation into a human body unless the anatomical parts or the donor have been examined for the presence of antibodies to or antigens of the human immunodeficiency virus and the test is negative for the presence of such antibodies or antigens. The testing requirement of this section does not apply if, in a medical emergency constituting a serious threat to the life of a potential anatomical part recipient, a required anatomical part that has been subjected to the testing required under this section is not available. The state department of health may adopt rules to implement the requirements of this section.

**23-06.2-12. Application.** This chapter applies to a document of gift or refusal to make a gift signed by the donor before, on, or after July 12, 1989.